



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 03-06-026**

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Gold Coast City Council

**Site Address:** *withheld*-“the subject site”

**Applicant:** *withheld*

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### **Nature of Appeal**

Appeal under the *Standard Building Regulation 1993* and the *Integrated Planning Act 1997* against the decision of Gold Coast City Council to approve with conditions an application for preliminary approval of building work for a dwelling to permit a minimum building setback of 2.210 metres to the outermost projection of the dwelling from the *withheld* road front boundary for alterations to an existing dwelling including the construction of an additional storey.

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**Date and Place of Hearing:** 9:00 am on Friday 17 March 2006 at “the subject site”

**Tribunal:** David Kay

**Present:** Owner  
Richard Sharpe - Gold Coast City Council  
Casey Mitchell - Gold Coast City Council  
Artemis Yiannou - Gold Coast City Council

### **Decision**

The decision of Gold Coast City Council dated 7 February 2006 to approve an application for preliminary approval of building work relating to the siting of a dwelling and a carport (Preliminary Building Application No. 25/13860) on “the subject site” is **changed by altering the first dot point condition under the heading “Planning Scheme” to the following:-**

“Part 5 Division 2 Chapter 4 of the Gold Coast Planning Scheme 2003 to permit the erection of a class 1 dwelling addition of 2 storeys at a minimum distance of 1.610 metres to the outermost projection consisting of an 0.6 metre eaves overhang and a minimum distance of 2.210 metres to the wall from the *withheld* road front boundary.”

## **Background**

*Applicant's submission to the tribunal.*

- The applicant submitted reasons in the documents lodged with the appeal which included that consideration should be made for the fact that the existing building has eaves currently located at a distance of 1.61 metres from the *withheld* road front boundary. A building complying with the approval could have the western wall constructed at 2.21 metres but would not be allowed to have eaves. If eaves were provided the upper level wall would need to be set back behind the existing lower level wall.
- The removal of eaves on the western wall is not considered to be an environmentally sound option and eaves assist in reducing cooling costs and energy consumption.
- The applicant could not see that eaves at the upper level in line with the existing eaves line would make a difference to the appearance and that being the western wall it would be beneficial to have eaves on the dwelling.

*Gold Coast City Council submission to the tribunal.*

- A written submission dated 16 March 2006 was presented to the Tribunal. A copy was also provided to the applicant.
- Richard Sharpe also considered that the proposed upper level has a degree of impact on the streetscape that is more severe than the existing low set dwelling.
- Issues were raised with the accuracy and conflicting detail on the drawings submitted with the application.
- The intent of the decision was that the 2.21metre setback applied to the eaves line and that the wall would be setback behind the eaves.
- The cost of construction to recess the wall is not a planning scheme consideration and it becomes a commercial decision for the owner.
- It is not usual for an approval to be given for a highset Class 1 dwelling this close to the road front boundary.
- There is also concern that a precedent would be set and this could lead to gradual “creep” of the building line.

## **Material Considered**

- Material submitted by the applicant with the appeal notice to the Tribunal;
- Decision Notice dated 7 February 2006 for Preliminary approval of building work;
- Written submission from Gold Coast City Council dated 16 March 2006;
- The Gold Coast Planning Scheme including Division 2 Chapter 4 Part 5;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975* and *Standard Building Regulation 1993*.

## **Findings of Fact**

- An application for preliminary approval for building work was made to the Gold Coast City Council.
- The application was approved with conditions by Gold Coast City Council.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Tribunal has jurisdiction to hear the appeal.

- The Gold Coast City Council approval allowed a 2.210m setback to the outermost projection of the proposed Class 1a dwelling.
- The building setback from the *withheld* front boundary does not comply with the Acceptable Solutions for a detached dwelling which requires a 6.0 metre setback.
- The Performance Criterion “Building Setback PC2” for a detached dwelling contains the performance requirements for the assessment of the application.

### **Reasons for the Decision**

- The Gold Coast Planning Scheme detached dwelling Performance Criteria for Building Setback PC2 states “All buildings must provide setbacks from the street frontage and the side and rear boundaries, which are appropriate to the efficient use of the site and the streetscape character of this domain”.
- The Gold Coast Planning Scheme does not contain a definition for the term “outermost projection”.
- The Gold Coast Planning Scheme is created and is applied under the powers contained in the *Integrated Planning Act 1997*.
- The *Standard Building Regulation* is declared as a code for the assessment of building work under the *Integrated Planning Act 1997*.
- In the absence of a definition for the “outermost projection” in The Gold Coast Planning Scheme it is appropriate to use the definition contained in documents forming part of the *Standard Building Regulation*.
- The Standard Building Regulation, which applies to building work in Queensland, through the Queensland Development Code “Part 12 –Design and Siting Standard for single detached housing on lots 450sq.m and over” defines the “outermost projection” as “ the outermost projection of any part of a building or structure including, in the case of a roof, the outside face of the fascia, or the roof structure where there is no fascia, or attached sunhoods or the like, but does not include retractable blinds, fixed screens, rainwater fittings, or ornamental attachments”.
- In reaching this decision I am satisfied that the outermost projection is the wall of the building where there is no eaves overhang or the fascia where there is an eaves overhang. It does not include the gutter attached to the fascia which is deemed to be part of the rainwater fittings.
- It was clear to the Tribunal, in examination of the plans before the hearing, that there was a discrepancy between the site plan and the proposed upper level floor plan relating to the overhang. The Gold Coast City Council, an organisation with substantial experience in dealing with this type of application, should have readily recognised this discrepancy.
- In respect to the lack of clarity on the plans, where the site plan does not show an eaves overhang but the upper level floor plan shows an overhang of approximately 0.60metre, the Gold Coast City Council must have examined these plans in considering their decision and could have raised any concerns before issuing the decision notice.
- In response to representations made to the tribunal that the intent of the decision issued by the Gold Coast City Council was to have the eaves overhang at 2.21metres and the wall of the upper storey set back approximately 0.6 m behind this. It is my view that the Gold Coast City Council has sufficient experience in dealing with these matters to clearly state in a decision notice the precise nature of the siting relaxation granted.
- The decision notice issued by the Gold Coast City Council also referred to a lowset building which could also be confusing in its terminology.

- The decision of the Gold Coast City Council granted approval to allow the outermost projection of the building to be constructed at 2.21 metres from the *withheld* road front boundary and allows the wall to be built at this setback where the building is not provided with an eaves overhang.
- It is my view that the addition of another storey to the existing building with a road front boundary setback to the wall of 2.21 m from *withheld* is appropriate to the efficient use of the site and the streetscape character of this domain.
- The subject of the appeal is also a question as to whether an eaves overhang of up to 0.6 metres beyond the 2.21 metre road front boundary setback is appropriate to the efficient use of the site and the streetscape character of this domain.
- An overhang of 0.6 metres has the effect of reducing the height of the external wall by approximately 0.2 metres for this proposal. It is my view that eaves overhangs also provide a visual break in vertical sightlines and have the effect of reducing the visual impact of a vertical wall.
- An overhang of 0.6 metres for the upper level provides shading to the western wall sufficient to satisfy the building fabric thermal insulation of Part 3.12.1 of the BCA Volume 2 without adding wall insulation. The addition of wall insulation would add to the performance of this building in relation to energy efficiency measures.
- It is my opinion that the addition of an eaves overhang having a width of 0.6 metres and a height varying from 0.2 metres at the fascia edge to 0.4 metre at the wall situated at a height of 5.6 metres above the ground level along the *withheld* road front boundary of this site is of such a small scale that it would not detract from the streetscape character of this locality and is appropriate to the efficient use of this site and the streetscape character of this domain.
- In relation to the matter of “precedent” raised by the Gold Coast City Council, this site already has a lowset dwelling located at 1.61 metres from the *withheld* road front boundary. The purpose of all applications is to judge each application individually on its merit. In this case the raising of the building height by adding another storey and maintaining the same building alignment provides justification whereas a vacant site has no established building setback and would be assessed accordingly.
- For the benefit of the Gold Coast City Council and the applicant it should be noted that the Tribunal holds the view that the Gold Coast City Council decision did not approve a siting variation from the *withheld* road boundary setback and that the building setback from this frontage should be 6.0 metres unless a further siting variation is approved by the Gold Coast City Council.

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**David Kay**  
**Building and Development**  
**Tribunal Referee**  
**Date: 23 March 2006**

## **Appeal Rights**

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

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